

D.P.U. 94-49-B

Petition of Boston Edison Company, pursuant to General Laws Chapter 164, §§ 69I, 76, 94, and 94A, and 220 C.M.R. §§ 10.00 et seq. for review of the procedures by which additional energy resources are planned, solicited, and procured by Boston Edison Company.

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ORDER ON MOTION FOR CLARIFICATION

I. INTRODUCTION

A. Procedural History

On March 13, 1995,¹ Boston Edison Company ("BECo" or "Company") submitted a revised demand-side management ("DSM") request for proposals ("RFP") in compliance with the Department of Public Utilities' ("Department") Order in review of the Company's initial filing pursuant to 220 C.M.R. §§ 10.00 et seq., the integrated resource management ("IRM") regulations.² Boston Edison Company, D.P.U. 94-49 (1995). On July 19, 1995, the Department issued an Order in review of the Company's compliance filing. Boston Edison Company, D.P.U. 94-49-A ("D.P.U. 94-49-A") (1995).³ On August 8, 1995, the Company submitted a Motion for Clarification ("Motion") of the Department's Order in D.P.U. 94-49-A.⁴ On August 18, 1995, the Company submitted

¹ On March 31, 1995, the Company submitted updated information for incorporation in its compliance filing.

² On June 1, 1995, the Department adopted new integrated resource planning ("IRP") rules for electric utility companies, including BECo. Integrated Resource Planning Rules, D.P.U. 94-162 (1995); 220 C.M.R. §§ 10.00 et seq. These new rules became effective on June 30, 1995, and now apply to the remainder of this planning and procurement cycle.

³ On August 4, 1995, the Company, at the Department's direction, issued the DSM RFP.

⁴ With its Motion, the Company provided a Memorandum in Support of its Motion ("Memorandum"), and indicated that, on August 18, 1995, it intended to submit additional information in support of its request.

additional information on the projection of cost adders that would be applied to bids in assessing their cost-effectiveness ("August 18, 1995 filing").

B. Motion for Clarification

In D.P.U. 94-49-A, the Department raised concerns regarding the cost adders that the Company proposed to apply to sponsor bids to account for the costs that it would incur for proposal evaluation, administration, monitoring and evaluation, and overhead. D.P.U. 94-49-A at 9. Specifically, the Department noted that the proposed adders appeared excessive and might inappropriately contain some program-specific costs or Company overhead costs.⁵ Id. The Department stated that it would review the cost adders in the Company's next conservation charge ("CC") filing.⁶ Id.

In its Memorandum, the Company noted that D.P.U. 94-49-A does not state how the cost adders are to be determined (Memorandum at 1). The Company contended that clarification is appropriate in this instance because this issue requires determination, the Order is sufficiently ambiguous so as to leave doubt as to its meaning, and clarification is otherwise appropriate to avoid any misinterpretation (id. at 2).

The Company stated that it believes it has applied the appropriate

⁵ Based on D.P.U. 94-49-A, the DSM RFP issued by the Company contained a revised calculation of the cost adders (Memorandum at 2).

⁶ The Department stated that it would disallow recovery of inappropriate charges.

level of cost adders and has submitted additional information that describes the projected administrative tasks and costs associated with program implementation (id.). The Company requests that the Department determine whether the Company's cost adders have been calculated in compliance with D.P.U. 94-49-A (id. at 3).

C. Standard of Review

Clarification of previously issued orders may be granted when an order is silent as to the disposition of a specific issue requiring determination in the order, or when the order contains language that is sufficiently ambiguous to leave doubt as to its meaning. Berkshire Gas Company, D.P.U. 92-210-B at 3 (1993), citing Whitinsville Water Company, D.P.U. 89-67-A at 1-2 (1989). The Department may clarify some aspect of an order that may be unclear or confusing. Boston Edison Company, D.P.U. 91-233-D-1 at 2 (1994), citing Fitchburg Gas & Electric Light Company, D.P.U. 19296/19297, at 2 (1976). Clarification does not involve reexamining the record for the purpose of substantively modifying a decision. Id.

D. Analysis and Findings

In D.P.U. 94-49-A, the Department observed that BECo's proposed adders in its DSM RFP for monitoring, evaluation, administrative, and general ("overhead") costs appeared excessive and that the overhead cost adders that the Company would assign to non-Company bids might inappropriately contain some program-specific costs or Company overhead costs that should be reduced or reallocated if the number of Company-sponsored programs is reduced. In its Memorandum, the Company stated that it believes it has applied the appropriate level of cost adders and requested that the Department determine whether the

Company's cost adders have been calculated in compliance with D.P.U. 94-49-A. In support of its request, the Company has submitted additional information which describes the projected administrative tasks and costs associated with program implementation.

The Company's request is beyond the scope of a motion for clarification. The Order did not make a specific finding on the appropriate level of cost adders because the Department determined that it would not be necessary at that time. The Department left to the Company the determination of the appropriate level of cost adders that would be applied to bids in assessing their cost-effectiveness. Further, the August 18, 1995 filing contains information that was not available at the time the Order was issued. Specific determination of the appropriate level of cost adders based on information proffered after the Department's Order has been issued is beyond the scope of clarification.

Although the Company's request that the Department determine whether the Company's cost adders have been calculated in compliance with D.P.U. 94-49-A goes beyond the scope of clarification, the Department is compelled to respond to the information contained in the August 18, 1995 filing. An RFP that goes forward with an inappropriate level of cost adders would result in misidentification of DSM programs that are actually cost-effective and, even if the appropriate level is later determined, may have a chilling effect on bidder participation or even necessitate issuance of a new DSM RFP. Accordingly, the Department shall reopen the record in this proceeding

to determine the appropriate level of cost adders.⁷ In order for potential bidders to include the appropriate level of cost adders when developing their proposals, the Department shall extend the DSM RFP response deadline until thirty days after this determination has been issued.⁸ See DSM RFP § 4.2.1. In addition, the Company shall notify bid sponsors who, pursuant to DSM RFP § 4.1, have submitted a Notice of Intent to Bid of this extension.⁹

⁷ In D.P.U. 94-49-A, the Department stated that it would scrutinize BECo's overhead costs in the Company's next conservation charge proceeding to determine to what extent these costs are properly recoverable from ratepayers as DSM overhead charges. While the Department does not preclude this review, the determination of an appropriate level of overhead adders is an important component in the DSM solicitation.

⁸ Subsequent deadlines in the DSM RFP should also be extended by the same period.

⁹ Bid sponsors should be notified of this extension, and subsequently notified when the determination of the appropriate level of cost adders has been issued.

II. ORDER

After due consideration, it is hereby

ORDERED: That the Motion for Clarification of Boston Edison Company be and hereby is denied; and it is

FURTHER ORDERED: That the Boston Edison Company shall comply with all Orders and directives contained herein.

By Order of the Department,

Kenneth Gordon, Chairman

Mary Clark Webster, Commissioner

Janet Gail Besser, Commissioner

Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Such petition for appeal may be filed with the Secretary of the Commission within twenty days after the date of service for the decision order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of Said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).